

Greg Dain/R1/USEPA/US
04/23/2004 10:57 AM

To Jane Medeiros Friedman
<Jane.Medeiros.Friedman@ci.new-bedford.ma.us>
cc
bcc
Subject RE: CAFO 

Done. See attached version with your changes included.



New_Bedford_Draft_CAFO_04.23.04_11.00am.wpd

Jane Medeiros Friedman <Jane.Medeiros.Friedman@ci.new-bedford.ma.us>



Jane Medeiros
Friedman
<Jane.Medeiros.Friedman@ci.new-bedford.ma.us>

04/23/2004 10:04 AM

To: Greg Dain/R1/USEPA/US@EPA
cc:
Subject: RE: CAFO

Greg:

One final comment... I'd just like to add "subsurface" in the third from last sentence and next to last sentence in paragraph 9:

One of the thirty-nine subsurface samples taken exceeded 50 ppm, i.e. 61.4 ppm. Subsequent subsurface sampling has revealed additional analytical results of PCBs in concentrations greater than 50 ppm at the Site.

Thanks.

Jane Medeiros Friedman

-----Original Message-----

From: dain.greg@epamail.epa.gov [mailto:dain.greg@epamail.epa.gov]
Sent: Friday, April 23, 2004 9:36 AM
To: Jane Medeiros Friedman
Cc: milette.marianne@epamail.epa.gov; tisa.kimberly@epamail.epa.gov;
Brown.Deborah@epamail.epa.gov
Subject: Re: CAFO

Jane,

See the attached latest draft of the CAFO.

I have tried to amend paragraph 9 along the lines you suggested, but made it much simpler. I also added a sentence about more recent sample results being in excess of 50 ppm, so it doesn't appear that this whole thing is about one hit above 50 ppm.

I added the October 2000 meeting to paragraph 19.

I understand we are still waiting for Alan Hanscom and Kim Tisa to finalize their discussions/drafting of the Work Plan.

(See attached file: New_Bedford_Draft_CAF0_04.23.04_9.30am.wpd)

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|                                     |
|                                     | Jane Medeiros Friedman
|                                     | <Jane.Medeiros.Friedman@ci.new-bed
|                                     | ford.ma.us>
|                                     |
|                                     | 04/22/2004 05:06 PM
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|
|      To:      Greg Dain/R1/USEPA/US@EPA
|
|      cc:
|
|      Subject: CAF0
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Greg:

Regarding paragraph 9, since the sampling at the site pre-dated 2004, I asked Alan Hanscom to provide more information on the sampling history at the site. I'm not sure if this provides too much detail, but I'm submitting it for your review:

9. On or about April 12, 2000, Respondent initiated geotechnical investigations at the Site and "suspect" soil conditions were identified. Based upon initial chemical analyses, several reportable concentrations (120-day, as defined in the Massachusetts Contingency Plan) were detected and supplemental environmental sampling was performed. PCBs were first detected in a subsurface soil sample collected for geotechnical evaluation at 18 parts per million (ppm). On or about August 18, 2000, PCBs were detected in one sediment sample (also at 18 ppm), triggering a 2-hour MADEP notification requirement under the MCP. Since that time, significant sampling has been performed for a variety of contaminants in site soil, soil gas, groundwater, surface water and wetland sediment. On or about December 20, 2001, the MADEP granted the Site "Special Project Designation Status", pursuant to the provisions of the MCP.

In preparation for the initial site remediation contract for the new Keith Middle School, Respondent conducted additional sampling of soil, fill and organic silt at the Site on or about February 23, 2004. On or about March 9, 2004, Respondent obtained laboratory analytical results of the soil sampling, indicating that PCB's were present at concentrations ranging from non-detect to greater than 50 (ppm). One of the thirty-nine samples exceeded 50 ppm (61.4 ppm). Prior to March 9, 2004, the highest concentration of PCBs detected in any media at the Site was 18 ppm.

Regarding paragraph 19, I would like to include a reference to the public meeting which occurred on or about October 30, 2000. During that meeting the public was advised that McCoy Field was the intended site for the new Keith Middle School and that the design for the school would also address environmental issues at the site.
Thanks.

Jane Medeiros Friedman

Jane Medeiros Friedman, Esq.
Associate Solicitor ~ City of New Bedford
133 William Street
New Bedford, MA 02740
Tel: 508-979-1460
Fax: 508-979-1515

Notice of Confidentiality:

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

EPA DRAFT: 4/20/04

City of New Bedford, Massachusetts

Docket No. TSCA-1-2004-0052

Respondent

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I ("EPA"), alleges that the City of New Bedford, Massachusetts (the "City" or "Respondent") violated sections of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, and the Act's implementing regulations, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions," 40 C.F.R. Part 761. EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order ("CAFO") without the filing of an administrative complaint, as authorized under 40 CFR § 22.13(b).

The EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, without taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

A. PRELIMINARY STATEMENT

1. This is an administrative action for the assessment of monetary penalties and other

relief pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for alleged violations of Section 15 of TSCA, 15 U.S.C. §2614. Section 15(1)(C) states that it shall be unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. §2605.

2. The PCB regulations were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

3. The PCB regulations “establish prohibitions of, and requirements for, the manufacturing, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” 40 C.F.R. § 761.1(a).

4. Respondent is a "person" as defined by 40 C.F.R. § 761.3 and as such is subject to TSCA and the regulations promulgated thereunder.

5. Respondent is a political subdivision of the Commonwealth of Massachusetts.

6. Respondent owns and controls real property, which is the subject of this action, and is located in the City of New Bedford, Massachusetts (the "Site"). The property is commonly referred to as McCoy Field, and is located on Hathaway Boulevard. The City of New Bedford acquired the McCoy Field site through a Treasurer's Deed to the City, recorded in the Bristol County Registry of Deeds (S.D.) at Book 849, Page 329, which includes Plat 69, Lots 125-132 and 135-142; and through a Treasurer's Deed to the City, recorded in the Bristol County Registry of Deeds (S.D.) at Book 885, Page 401, which includes Plat 75, Lots 167-174, 177-184, 209-228, 292-342. (Deeds Attached as Attachment 2).

7. In the late 1960s, material that consisted of, among other things, ash, construction and demolition debris, glass and brick, was excavated from a City of New Bedford "burn dump" area located across the street from the Site. At least some portion of this excavated material contained PCBs. The excavated material was stockpiled by Respondent at the Site.

8. In or about 1994, the stockpiled material referenced in paragraph 7, above, was spread out and graded at the Site by Respondent for the purpose of constructing athletic fields. The Site is not currently in use and has now been closed by the Respondent.

9. On or about April 12, 2000, Respondent initiated geotechnical investigations at the Site, which included, among other things, initial chemical analyses and soil sampling. Beginning on or about February 23, 2004, Respondent began conducting more extensive analytical sampling of soil, fill and organic silt at the Site, in preparation for planned excavations required for the installation of underground utilities associated with a public school building Respondent plans to construct at the Site. On or about March 9, 2004, Respondent obtained laboratory analytical results of the sampling, indicating that PCBs were present in soil samples collected along the proposed utility corridor at concentrations ranging from non-detect to greater than 50 parts per million (ppm). One of the thirty-nine subsurface samples taken exceeded 50 ppm, i.e. 61.4 ppm. Subsequent subsurface sampling has revealed additional analytical results of PCBs in concentrations greater than 50 ppm at the Site. Prior to March 9, 2004, the highest concentration of PCBs detected at the Site was 18 ppm.

10. EPA learned of the facts set forth in paragraphs 7 through 9, above, in March of 2004.

B. ALLEGATIONS

11. EPA alleges that, as a result of the activities referenced in paragraphs 7 through 9, above, Respondent violated Section 6(e) of TSCA and the PCB regulations.

12. EPA alleges that in or about 1994, Respondent diluted PCB Remediation Waste (as defined at 40 C.F.R. §761.3) in violation of 40 CFR §761.1(b)(5). Respondent alleges that its dilution of PCB Remediation Waste was inadvertant.

13. EPA alleges that in or about 1994, Respondent improperly disposed of the PCB Remediation Waste referenced in paragraphs 7 through 9, above, and further alleges that Respondent has to date not cleaned up and disposed of the PCB Remediation Waste in accordance with the requirements found at 40 C.F.R. §761.61.

C. TERMS OF SETTLEMENT

14. Section 16(a) of TSCA, together with the Civil Monetary Penalty Inflation Rule (40 C.F.R. Part 19), authorize the assessment of a civil administrative penalty of up to \$32,500 per day for each violation. Based on the violations alleged in paragraphs 11 and 13, above, and taking into account the penalty assessment criteria of Section 16(a) of TSCA, EPA has proposed to assess a civil penalty of \$27,500.

15. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors and assigns.

16. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in this CAFO, consents to its terms.

17. Respondent hereby waives its right to contest any issue of law or fact set forth in the Consent Agreement and its right to appeal the Final Order accompanying this Consent Agreement.

PCB-IMPACTED WASTE REMOVAL IN UTILITY CORRIDORS
AND AT PILE CAP AND GRADE BEAM LOCATIONS

18. Respondent shall conduct sampling and shall perform a removal of the PCB contamination located in the proposed utility corridors and in the vicinity of the proposed building pile caps and grade beams at the Site, in accordance with the Work Plan dated April 16, 2004 (the "Work Plan"). The Work Plan is included as Attachment 1 to this CAFO and is hereby incorporated by reference.

19. Respondent has initiated a series of public meetings and associated activities to address public concerns related to the upcoming construction activities at the Site. At a minimum, such public hearings have included or will include:

October 30, 2000: public meeting held by Respondent to inform the public that the Site was the intended location for the new Keith Middle School, and that the school's overall design and construction would include addressing environmental concerns at the Site.

April 7, 2004: public meeting at Keith Junior High School Auditorium regarding construction activities to be performed under the first environmental contract, including removal off-site of PCB-contaminated materials. During this meeting, Respondent discussed in detail the

process for disposing of PCB-contaminated material at a location outside of New Bedford. That discussion also addressed the public's concerns about the routes that will be taken by the disposal trucks, and associated dirt and dust control issues.

April 28, 2004: community meeting at Keith Junior High School Auditorium to present overall building program for new Keith Middle School at the Site.

May 5, 2004: first Public Involvement Plan ("PIP") meeting at Keith Junior High School Auditorium to present the PIP and solicit input from the public.

Subsequent public meetings will be scheduled by Respondent, based upon the results of the PIP meetings.

20. On or before September 30, 2004, Respondent shall complete all PCB activities described in the Work Plan.

21. Within 30 days of the completion of PCB activities described in the Work Plan, Respondent shall submit a certification to EPA Region 1, at the address provided below, signed by a city official authorized to do so on behalf of the City of New Bedford, that the activities in the proposed utility corridors and the locations of the proposed pile caps and grade beams were completed in accordance with the provisions of this CAFO and the Work Plan. The certification shall include a short summary of the activities, copies of PCB waste shipment manifests, bills of lading, the total quantity of PCB-contaminated waste disposed of (in pounds) based on concentrations of less than 50ppm (< 50ppm) and greater than or equal to 50ppm (\geq 50ppm), and any certificates of disposal received as of the date of certification. All submissions required by this Order shall be sent to:

Kimberly Tisa, PCB Coordinator
U.S. Environmental Protection Agency
One Congress Street, Suite 1100 (CPT)
Boston, MA 02114-2023
(617) 918- 1527
FAX (617) 918- 0527

CLEANUP OF REMAINDER OF THE SITE

22. EPA and Respondent agree that the requirements for cleanup of any PCB contamination at the Site in areas other than the utility corridors and the locations of the proposed pile caps and grade beams (referenced in paragraphs 18 through 20 above) are not being addressed in this CAFO. EPA expressly reserves all its rights to ensure in the future that Respondent undertakes all appropriate cleanup measures to address PCB contamination at the Site, in areas other than the utility corridors and the locations of the proposed pile caps and grade beams, in accordance with 40 CFR 761.61. Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address at the Site pollutants or contaminants of any kind other than PCBs.

23. Pursuant to Section 16 of TSCA, and taking into account the facts recounted in this CAFO and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the amount of twenty-seven thousand, five hundred dollars (\$27,500).

24. Respondent shall pay the penalty of twenty-seven thousand, five hundred dollars (\$27,500) within thirty (30) days of the date this Consent Agreement and Final Order is signed by

the EPA Regional Judicial Officer.

25. Respondent shall pay the penalty by submitting a certified or cashier's check to the order of the "Treasurer, United States of America" and in the required amount to:

EPA - Region 1
P.O. Box 360197M
Pittsburgh, PA 15251

Respondent shall note the case name and docket number of this action on the check, and

shall provide copies of the check to:

Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 1
Suite 1100, Mail Code RCH
One Congress Street
Boston, MA 02114-2023

and

Gregory Dain
Senior Enforcement Counsel
U.S. Environmental Protection
Agency, Region 1
Suite 1100, Mail Code SEL
One Congress Street
Boston, MA 02114-2023

26. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover

the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty if it is not paid within thirty (30) calendar days of the entry of the CAFO.

Pursuant to Section 309(g)(9), 33 U.S.C. §1319(g)(9), a failure by Respondent to pay the penalty assessed by the CAFO in full by its due date shall subject the Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of the final order. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. §3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

27. The civil penalty under this CAFO, and any interest, nonpayment penalties and charges described in this CAFO, shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

28. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the violations alleged in this CAFO only as to the PCB-contaminated soils in the utility areas and the locations of the proposed pile caps and grade beams identified in paragraphs 18 through 20, above. EPA expressly reserves all its rights to address violations of Section 16(a) of TSCA relating to PCB-contaminated areas of the site other than the

utility areas identified in paragraphs 18 through 20, above. Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address pollutants or contaminants of any kind other than PCBs that may exist at the Site. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

29. The parties shall bear their own costs and fees in this action.

30. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

For Respondent:

Name

Title

Date

For Complainant:

Joel Blumstein
Acting Manager, Enforcement Unit
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date

C. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

Sharon Wells
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

Date

Greg Dain/R1/USEPA/US

05/03/2004 12:03 PM

To Jane Medeiros Friedman

<Jane.Medeiros.Friedman@ci.new-bedford.ma.us>

cc Kimberly Tisa/R1/USEPA/US@EPA, Marianne

Milette/R1/USEPA/US@EPA, Deborah

Brown/R1/USEPA/US@EPA, Catherine

bcc

Subject McCoy Field Status Update

Hi Jane,

Please read Kim Tisa's note, below. Finalizing the Work Plan seems to be holding things up much longer than originally expected. Kim has made herself available to review all of the information relevant to the Work Plan (and the Work Plan itself) since we had our meeting. EPA is ready to finalize the CAFO as soon as the Work Plan is finalized as approved by Kim. Note that the Work Plan must, among other things, include a narrative of the work as it is intended to be conducted. The 3 elements needed to finalize the Work Plan are: 1) the analytical data discussed between Kim and Alan Hanscom; 2) an opportunity for Kim to QA/QC that data; and 3) the narrative portion of the Work Plan that describes the actual work and how that work will be conducted.

I just want you to know that the delay is not from our end. Please call me if you have any questions.

Greg

----- Forwarded by Greg Dain/R1/USEPA/US on 05/03/2004 11:43 AM -----

 Kimberly Tisa

05/03/2004 09:30 AM

To: Greg Dain/R1/USEPA/US@EPA

cc: Marianne Milette/R1/USEPA/US@EPA

Subject: McCoy Field Status Update

Just wanted to give you a quick status of where we are on McCoy Field. I did receive analytical data on April 28, 2004. While I understood that I would be receiving the narrative Work Plan either Thursday or Friday (April 29 or 30), I don't appear to have received it as of today.

In addition, in order to approve the Work Plan, I'm also going to need to do a data quality review of the analytical data. The data I've received is just in tabular form and contains no "raw" chromatographic data. While I did receive a limited set of data from Alan via e-mail on 4/28 which did contain some raw data and which I will be reviewing this morning, it is insufficient to make a definitive conclusion on the quality of all the data. I will need to do a random review of the data to date in order to make this determination. I've discussed this with BETA on several occasions and they are aware of this fact. I did offer to go to the lab to do this but understand that the earliest may be next week since the lab director is at the New England Environmental Expo.

Just for timing considerations, I will be in New Bedford on Wednesday (5/5) on the Rail Depot Site and in Hartford, CT on another project Thursday (5/6). I also am scheduled for a medical appointment on Friday and won't be in the office.

Please call me if you have any questions.

Kimberly Tisa, PCB Coordinator (CPT)

USEPA

1 Congress Street, Suite 1100

Boston, MA 02114-2023

617.918.1527 (PHONE)

617.918.0527 (FAX)

Greg Dain/R1/USEPA/US
05/18/2004 11:17 AM

To Jane Medeiros Friedman
<Jane.Medeiros.Friedman@ci.new-bedford.ma.us>
cc
bcc
Subject Re: McCoy Field - Revised Work Plan

FYI. See issue #2, below in Kim's message to Hanscom.

Greg

----- Forwarded by Greg Dain/R1/USEPA/US on 05/18/2004 11:16 AM -----



Kimberly Tisa
05/18/2004 09:04 AM

To: Jackie Huggins <JHuggins@BETA-Inc.com>
cc: Alan Hanscom <AHanscom@BETA-Inc.com>, (bcc: Greg
Dain/R1/USEPA/US)
Subject: Re: McCoy Field - Revised Work Plan

I've forwarded the Work Plan to Greg Dain for the CAFO. Once the City and EPA sign the CAFO, you can begin work. Please note that 2 outstanding issues remain:

1. The contractor's soil excavation/management plan. As noted in the Work Plan this is to be submitted to EPA for review and comment. I understand that BETA has reviewed the original draft and has commented back to the contractor. EPA would suggest that the contractor's revised plan be submitted as soon as possible for EPA's review.

2. With respect to the proposed disposer for the < 50ppm PCB-contaminated material. I did review the proposed disposal facilities' permits and did identify an issues for Turnkey. The the waste prohibition section, EPA noted that "PCBs regulated under the Toxic Substances Control Act (as amended 761.61)" were prohibited. Please note that while < 50ppm PCBs, these wastes are regulated for disposal under TSCA. TSCA simply provides an allowance for disposal in a Subpart D landfill (see 761.61(a)(5)). EPA encourages BETA and/or the City to clarify this with the disposer. It may be as simple as a letter from the state clarifying the prohibition...perhaps Turnkey has already done this. If so, it should be included with the permit for clarification of the PCB waste prohibition.

I've also asked Jackie to provide me with a complete up-to-date copy of the Work Plan and all associated attachments as I've given my to the attorney for attachment to the CAFO. Also, just as an FYI for the next PIP meeting....I will be in DC that week for a PCB meeting and will be unable to attend. In the event anyone has any questions for EPA, I will be back in the office on Monday, June 14. Please extend my apologies for my absence.

Any questions, please call. I also will likely visit the site in the next week or so (June 1-3). I'll give you a call once I determine the exact date.

Kimberly Tisa, PCB Coordinator (CPT)
USEPA
1 Congress Street, Suite 1100
Boston, MA 02114-2023

617.918.1527 (PHONE)
617.918.0527 (FAX)
e-mail: tisa.kimberly@epa.gov



BETA Group, Inc.
Engineers • Scientists • Planners

315 Norwood Park South, Norwood, MA 02062 781.255.1982 fax: 781.255.1974
6 Blackstone Valley Place, Lincoln, RI 02865 401.333.2382 fax: 401.333.9225
88D Howard Street, New London, CT 06329 860.437.0239
email: BETA@BETA-inc.com

LETTER OF TRANSMITTAL

TO: Kimberly Tisa – PCB Coordinator
EPA New England, Region 1
1 Congress Street
Suite 1100 (CPT)
Boston, MA 02114-2023
Tel. (617) 918-1527

DATE: 4/28/04 BETA JOB No. 02865

RE: McCoy Field
DRAFT Work Plan

WE ARE SENDING YOU THE FOLLOWING ITEMS:

- ☒ ATTACHED ☐ UNDER SEPARATE COVER
☐ SPECIFICATIONS ☐ PRINTS ☐ SEPIAS ☐ COPY OF LETTER
☐ SHOP DRAWINGS

COPIES	DATE	REV	NO.	TITLE OR DESCRIPTION
1	April 28, 2004			DRAFT Work Plan Volume I of II (Figure and Attachments Only) McCoy Field New Bedford, MA RTN 4-15685
1	April 28, 2004			Attachments G through K to Work Plan Volume II of II McCoy Field New Bedford, MA RTN 4-15685

- ☐ FOR YOUR INFORMATION ☐ _____
☐ FOR APPROVAL _____
☐ FOR COMMENT _____
☐ FOR YOUR USE ☐ PRINTS RETURNED AFTER LOAN TO US
☒ AS PER YOUR REQUEST
☐ FOR REVIEW AND COMMENT

REMARKS: Alan Hanscom will e-mail you the text of DRAFT Work Plan tomorrow.

COPIES TO: _____

SIGNED: _____

Jacqueline L. Huggins



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

MAY 21 2004

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Jane Medeiros Friedman, Esq.
Associate Solicitor – City of New Bedford
133 William Street
New Bedford, Massachusetts 02740

RE: In the Matter of: City of New Bedford; Docket No. TSCA-1-2004-0052

Dear Ms. Friedman:

Please find enclosed a fully executed copy of the Consent Agreement and Final Order (the "Agreement") for the above-referenced matter. As we agreed, I have not attached a copy of the work plan for the PCB cleanup. Note that the City of New Bedford is required, pursuant to paragraphs 24 and 25 of the Agreement, to pay the penalty of \$27,500 within thirty (30) days of May 21, 2004 (the date the Regional Judicial Officer signed the Agreement).

Please also note that it is EPA's standard practice to issue press releases for administrative case settlements. Thank you for your cooperation in this matter. If you have any questions, please call me at (617) 918-1884.

Sincerely,


Gregory Dain
Senior Enforcement Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)

City of New Bedford, Massachusetts)

Respondent)

Docket No. TSCA-1-2004-0052

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I ("EPA"), alleges that the City of New Bedford, Massachusetts (the "City" or "Respondent") violated sections of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, and the Act's implementing regulations, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions," 40 C.F.R. Part 761. EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order ("CAFO") without the filing of an administrative complaint, as authorized under 40 CFR § 22.13(b).

The EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, without taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

A. PRELIMINARY STATEMENT

1. This is an administrative action for the assessment of monetary penalties and other

relief pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for alleged violations of Section 15 of TSCA, 15 U.S.C. §2614. Section 15(1)(C) states that it shall be unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. §2605.

2. The PCB regulations were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

3. The PCB regulations “establish prohibitions of, and requirements for, the manufacturing, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” 40 C.F.R. § 761.1(a).

4. Respondent is a "person" as defined by 40 C.F.R. § 761.3 and as such is subject to TSCA and the regulations promulgated thereunder.

5. Respondent is a political subdivision of the Commonwealth of Massachusetts.

6. Respondent owns and controls real property, which is the subject of this action, and is located in the City of New Bedford, Massachusetts (the "Site"). The property is commonly referred to as McCoy Field, and is located on Hathaway Boulevard. The City of New Bedford acquired the McCoy Field site through a Treasurer's Deed to the City, recorded in the Bristol County Registry of Deeds (S.D.) at Book 849, Page 329, which includes Plat 69, Lots 125-132 and 135-142; and through a Treasurer's Deed to the City, recorded in the Bristol County Registry of Deeds (S.D.) at Book 885, Page 401, which includes Plat 75, Lots 167-174, 177-184, 209-228, 292-342.

7. In the late 1960s, material that consisted of, among other things, ash, construction and demolition debris, glass and brick, was excavated from a City of New Bedford "burn dump" area located across the street from the Site. At least some portion of this excavated material contained PCBs. The excavated material was stockpiled by Respondent at the Site.

8. In or about 1994, the stockpiled material referenced in paragraph 7, above, was spread out and graded at the Site by Respondent for the purpose of constructing athletic fields. The Site is not currently in use and has now been closed by the Respondent.

9. On or about April 12, 2000, Respondent initiated geotechnical investigations at the Site, which included, among other things, initial chemical analyses and soil sampling. Beginning on or about February 23, 2004, Respondent began conducting more extensive analytical sampling of soil, fill and organic silt at the Site, in preparation for planned excavations required for the installation of underground utilities associated with a public school building Respondent plans to construct at the Site. On or about March 9, 2004, Respondent obtained laboratory analytical results of the sampling, indicating that PCBs were present in soil samples collected along the proposed utility corridor at concentrations ranging from non-detect to greater than 50 parts per million (ppm). One of the thirty-nine subsurface samples taken exceeded 50 ppm, i.e. 61.4 ppm. Subsequent subsurface sampling has revealed additional analytical results of PCBs in concentrations greater than 50 ppm at the Site. Prior to March 9, 2004, the highest concentration of PCBs detected at the Site was 18 ppm.

10. EPA learned of the facts set forth in paragraphs 7 through 9, above, in March of 2004.

B. ALLEGATIONS

11. EPA alleges that, as a result of the activities referenced in paragraphs 7 through 9, above, Respondent violated Section 6(e) of TSCA and the PCB regulations.

12. EPA alleges that in or about 1994, Respondent diluted PCB Remediation Waste (as defined at 40 C.F.R. §761.3) in violation of 40 CFR §761.1(b)(5). Respondent alleges that its dilution of PCB Remediation Waste was inadvertant.

13. EPA alleges that in or about 1994, Respondent improperly disposed of the PCB Remediation Waste referenced in paragraphs 7 through 9, above, and further alleges that Respondent has to date not cleaned up and disposed of the PCB Remediation Waste in accordance with the requirements found at 40 C.F.R. §761.61.

C. TERMS OF SETTLEMENT

14. Section 16(a) of TSCA, together with the Civil Monetary Penalty Inflation Rule (40 C.F.R. Part 19), authorize the assessment of a civil administrative penalty of up to \$32,500 per day for each violation. Based on the violations alleged in paragraphs 11 and 13, above, and taking into account the penalty assessment criteria of Section 16(a) of TSCA, EPA has proposed to assess a civil penalty of \$27,500.

15. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors and assigns.

16. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue, and,

without admitting or denying the factual allegations contained in this CAFO, consents to its terms.

17. Respondent hereby waives its right to contest any issue of law or fact set forth in the Consent Agreement and its right to appeal the Final Order accompanying this Consent Agreement.

PCB-IMPACTED WASTE REMOVAL IN UTILITY CORRIDORS
AND AT PILE CAP AND GRADE BEAM LOCATIONS

18. Respondent shall conduct sampling and shall perform a removal of the PCB contamination located in the proposed utility corridors and in the vicinity of the proposed building pile caps and grade beams at the Site, in accordance with the Work Plan (the "Work Plan"). The Work Plan is included as Attachment 1 to this CAFO and is hereby incorporated by reference. By entering into this CAFO, EPA is not certifying that the transporters or disposal facilities referenced in the Work Plan are legally authorized to conduct the activities set forth in the Work Plan. It shall be Respondent's responsibility to make such determinations.

19. Respondent has initiated a series of public meetings and associated activities to address public concerns related to the upcoming construction activities at the Site. At a minimum, such public hearings have included or will include:

October 30, 2000: public meeting held by Respondent to inform the public that the Site was the intended location for the new Keith Middle School, and that the school's overall design and construction would include addressing environmental concerns at the Site.

April 7, 2004: public meeting at Keith Junior High School Auditorium regarding

construction activities to be performed under the first environmental contract, including removal off-site of PCB-contaminated materials. During this meeting, Respondent discussed in detail the process for disposing of PCB-contaminated material at a location outside of New Bedford. That discussion also addressed the public's concerns about the routes that will be taken by the disposal trucks, and associated dirt and dust control issues.

April 28, 2004: community meeting at Keith Junior High School Auditorium to present overall building program for new Keith Middle School at the Site.

May 5, 2004: first Public Involvement Plan ("PIP") meeting at Keith Junior High School Auditorium to present the PIP and solicit input from the public.

Subsequent public meetings will be scheduled by Respondent, based upon the results of the PIP meetings.

20. On or before September 30, 2004, Respondent shall complete all PCB activities described in the Work Plan.

21. Within 30 days of the completion of PCB activities described in the Work Plan, Respondent shall submit a certification to EPA Region 1, at the address provided below, signed by a city official authorized to do so on behalf of the City of New Bedford, that the activities in the proposed utility corridors and the locations of the proposed pile caps and grade beams were completed in accordance with the provisions of this CAFO and the Work Plan. The certification shall include a short summary of the activities, copies of PCB waste shipment manifests, bills of lading, the total quantity of PCB-contaminated waste disposed of (in pounds) based on concentrations of less than 50ppm (< 50ppm) and greater than or equal to 50ppm (\geq 50ppm), and

any certificates of disposal received as of the date of certification. All submissions required by this Order shall be sent to:

Kimberly Tisa, PCB Coordinator
U.S. Environmental Protection Agency
One Congress Street, Suite 1100 (CPT)
Boston, MA 02114-2023
(617) 918- 1527
FAX (617) 918- 0527

CLEANUP OF REMAINDER OF THE SITE

22. EPA and Respondent agree that the requirements for cleanup of any PCB contamination at the Site in areas other than the utility corridors and the locations of the proposed pile caps and grade beams (referenced in paragraphs 18 through 20 above) are not being addressed in this CAFO. EPA expressly reserves all its rights to ensure in the future that Respondent undertakes all appropriate cleanup measures to address PCB contamination at the Site, in areas other than the utility corridors and the locations of the proposed pile caps and grade beams, in accordance with 40 CFR 761.61. Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address at the Site pollutants or contaminants of any kind other than PCBs.

23. Pursuant to Section 16 of TSCA, and taking into account the facts recounted in this CAFO and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the amount of twenty-seven thousand, five hundred dollars (\$27,500).

24. Respondent shall pay the penalty of twenty-seven thousand, five hundred dollars (\$27,500) within thirty (30) days of the date this Consent Agreement and Final Order is signed by the EPA Regional Judicial Officer.

25. Respondent shall pay the penalty by submitting a certified or cashier's check to the order of the "Treasurer, United States of America" and in the required amount to:

EPA - Region 1
P.O. Box 360197M
Pittsburgh, PA 15251

Respondent shall note the case name and docket number of this action on the check, and shall provide copies of the check to:

Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 1
Suite 1100, Mail Code RCH
One Congress Street
Boston, MA 02114-2023

and

Gregory Dain
Senior Enforcement Counsel
U.S. Environmental Protection
Agency, Region 1
Suite 1100, Mail Code SEL
One Congress Street
Boston, MA 02114-2023

26. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is

entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty if it is not paid within thirty (30) calendar days of the entry of the CAFO.

Pursuant to Section 309(g)(9), 33 U.S.C. §1319(g)(9), a failure by Respondent to pay the penalty assessed by the CAFO in full by its due date shall subject the Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of the final order. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. §3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

27. The civil penalty under this CAFO, and any interest, nonpayment penalties and charges described in this CAFO, shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

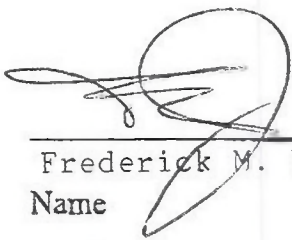
28. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the violations alleged in this CAFO only as to the PCB-contaminated soils in the utility areas and the locations of the proposed pile caps and grade beams identified in paragraphs 18 through 20, above. EPA expressly reserves all its rights to address violations of Section 16(a) of TSCA relating to PCB-contaminated areas of the site other than the

areas identified in paragraphs 18 through 20, above. Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address pollutants or contaminants of any kind other than PCBs that may exist at the Site. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

29. The parties shall bear their own costs and fees in this action.

30. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

For Respondent:



Frederick M. Kalisz, Jr.

Name

5/18/04

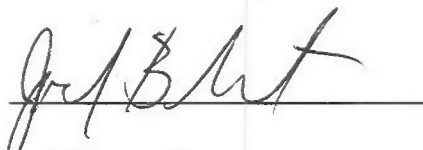
Date

Mayor

Title

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

For Complainant:



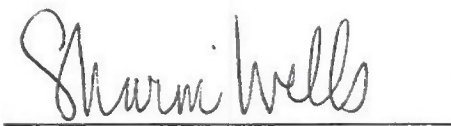
Joel Blumstein
Acting Manager, Enforcement Unit
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

5/20/04

Date

C. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.



Sharon Wells
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

5/21/04

Date

BEFORE THE ADMINISTRATOR

DOCKET NO.
TSCA 1-2004-0052

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on May 21, 2004, in the following manner:

Original and One Copy (with attachment),
Hand Delivered:

Regional Hearing Clerk (RCH)
U.S. EPA, Region 1
One Congress Street
Suite 1100
Boston, MA 02114-2023

Copy (without attachment) by Certified Mail, Return Receipt Requested:

Jane Medeiros Friedman, Esq.
Associate Solicitor – City of New Bedford
133 William Street
New Bedford, Massachusetts 02740

Gregory Dain

Date _____

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

MEMORANDUM

DATE: October 19, 2004

SUBJ: Proposed Amended Consent Agreement and Final Order for Settlement of TSCA
Administrative Penalty Action against the City of New Bedford, MA.

FROM: Greg Dain, OES/Regulatory Legal Office *GD*
Marianne Milette, OES/TSCA Program Office *MM*

TO: Sharon T. Wells, Regional Judicial Officer

Attached is an Amended Consent Agreement and Final Order ("Amended CAFO") which, if signed by you, would amend the attached May 21, 2004 Consent Agreement and Final Order (the "original Order") that resolved an administrative penalty action taken by Region 1 against the City of New Bedford, MA, for violations of EPA's PCB regulations promulgated under TSCA. The violations involved the improper dilution (albeit unintentional) and disposal of PCBs, and the failure to properly remediate the improper disposal of PCBs.

The Amended CAFO is necessary because the City of New Bedford will be removing PCB contaminated material from areas of the Site not contemplated in the original Order. Because those additional areas became contaminated with PCBs as a result of the same initial disposal activities that contaminated the areas specifically identified in the original Order, Region 1 staff is recommending that the original Order be modified to reflect the additional areas without any further penalty.

The terms of the Amended CAFO are consistent with EPA's PCB Penalty Policy, dated April 9, 1990.

cc: Jane Friedman, Esq.